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DISAPPROVING THE EXTENSION OF NONDISCRIMINA-
TORY TREATMENT TO THE PEOPLE'S REPUBLIC OF
CHINA

JULY 9, 1991.—Committed to the Committee of the Whole House on the State of the
Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.J. Res. 263]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the joint resolution (H.J. Res. 263) disapproving the extension of non-discriminatory treatment (most-favored-nation treatment) to the products of the People's Republic of China, having considered the same, report without recommendation.

BACKGROUND AND SUMMARY

Prior to 1951, the United States extended nondiscriminatory, most-favored-nation (MFN) treatment to all of its trading partners, in accord with obligations undertaken when the United States joined the General Agreement on Tariffs and Trade (GATT) in 1948. However, the Trade Agreements Extension Act of 1951 directed the President to withdraw or suspend the MFN status of the Soviet Union and all countries under the domination of international communism. As implemented, this directive was applied to all then-existing communist countries except Yugoslavia. Poland's MFN status was restored by Presidential directive in 1960.

Title IV of the Trade Act of 1974 (the so-called Jackson-Vanik amendment) represented a liberalization of the 1951 law. Title IV

authorizes the President to waive the freedom of emigration requirements of that title and grant MFN status to a nonmarket economy country, if he determines that so doing will substantially promote the objectives of freedom of emigration.

MFN status first was granted to the People's Republic of China on February 1, 1980, and has been renewed annually since then on the basis of a Presidential waiver. (A valid trade agreement, as required by Jackson-Vanik, has remained in force during that time.) On May 29, 1991, the President notified Congress of his intention once again to waive the Trade Act's freedom of emigration requirements and thereby extend China's MFN status for an additional year, beginning July 4, 1991 (H. Doc. 102-92).

The President's waiver authority under Title IV expires on July 3 of each year. It may be extended on an annual basis upon a Presidential determination and report to Congress that such extension will substantially promote the objectives of the Trade Act with respect to freedom of emigration. The waiver authority continues in effect unless disapproved by the Congress—either generally or with respect to a specific country—within 60 calendar days after July 3. Under amendments to the Jackson-Vanik statute adopted as part of the Customs and Trade Act of 1990, disapproval takes the form of a joint resolution disapproving Presidential waivers and reports relating to the Trade Act's freedom of emigration requirements. Under the 1990 amendments, Congress has 15 legislative days, in addition to the 60 calendar days for initial passage, to consider any veto message. (A legislative day is a day on which both the House and Senate are in session.)

If both chambers of Congress do not pass a resolution of disapproval within the 60 calendar days following July 3, China's MFN status will be renewed through July 3, 1992. House Joint Resolution 263 was introduced by Representatives Solomon, Schulze, Jenkins, Donnelly, and others on May 30, 1991. The resolution provides for disapproval of the President's waiver authority with respect to China for the period ending July 3, 1992.

COMMITTEE ACTION

House Joint Resolution 263 was introduced on May 30, 1991, by Representatives Solomon, Schulze, Jenkins, Donnelly, and others and was referred to the Committee on Ways and Means. The Subcommittee on Trade held a public hearing on June 12 on the issue of U.S. trade relations with China, including consideration of a number of bills and resolutions relating to China's MFN status. The Subcommittee received a great deal of oral and written testimony from representatives of the Administration, the private sector (including agriculture), human rights and religious organizations, and Chinese students and scholars resident in the United States.

On June 26, 1991, the Committee on Ways and Means, by voice vote, ordered House Joint Resolution 263 reported without recommendation to the House of Representatives.

SECTION-BY-SECTION ANALYSIS, COMPARISON WITH PRESENT LAW, AND
JUSTIFICATION

Present law

Title IV of the Trade Act of 1974, as amended by the Customs and Trade Act of 1990 (Public Law 101-382), sets forth three requirements relating to freedom of emigration which must be met, or waived by the President, in order for a nonmarket economy country to be granted MFN treatment. Title IV also requires that a trade agreement providing nondiscriminatory, MFN status remain in force between the United States and the nonmarket economy country receiving MFN status and sets forth minimum provisions which must be included in such an agreement.

Annual Presidential recommendations under section 402(d) for a 12-month extension of authority to waive Jackson-Vanik freedom of emigration requirements (either generally or for specific countries) are subject to a joint resolution of disapproval passed by the Congress within 60 calendar days after expiration of the previous waiver extension. An additional 15 legislative days, following the 60 calendar day period for initial passage, is available for consideration of any veto message.

Explanation of the resolution

House Joint Resolution 263 states that the Congress does not approve the extension of the waiver authority contained in section 402(c) of the Trade Act of 1974 recommended by the President to the Congress on May 29, 1991, with respect to the People's Republic of China.

Reasons for change

In June 1989, the hard-line leaders of the People's Republic of China ordered the violent suppression of peaceful demonstrations in Tiananmen Square by students and workers calling for greater freedom of expression and political reform in China. The United States and other countries responded to this unprovoked repression by imposing a range of economic and political sanctions against the Chinese regime. The purpose of those sanctions was to make it clear to the Chinese leaders that wanton violence against unarmed citizens was behavior which the civilized world would not tolerate. It would not be business as usual with the Chinese regime.

Since that time, most countries other than the United States have lifted all or part of the sanctions. However, all of the sanctions imposed by the United States remain in force, and additional steps have been taken by the Administration, as required by law, to address U.S. concerns over Chinese actions involving missile proliferation and the violation of U.S. intellectual property rights.

Despite the continuation of post-Tiananmen Square sanctions and additional steps recently taken by the Administration, China's behavior on a number of fronts does not appear to have improved, and in fact has even worsened. Many nonviolent protesters from the June 1989 demonstrations remain in prison and unaccounted for. Secret trials have been held and many nonviolent protesters sentenced to years in prison. Credible reports have surfaced that products made by prisoners have been exported to the United

States and elsewhere, in violation of international norms regarding the treatment of prisoners and in violation of U.S. law. Reports have indicated that China may be engaged in the sale to Pakistan, Syria, and perhaps other countries of missiles which fall within the limits of the missile technology control regime. China's reported sale in 1983 of an unsafeguarded nuclear power reactor to Algeria raises questions about China's commitment to nuclear nonproliferation. Finally, China has continued to resist calls for improved protection of U.S. intellectual property rights and maintains substantial barriers to U.S. exports.

While these actions by the Chinese regime are of concern to all Members of the Committee on Ways and Means, Members disagreed on the best means to address these concerns. Some Members noted that separate U.S. laws give the President the authority to take action to deal with Chinese behavior in a number of these areas. For example, the President already has designated China as a priority country under the so-called Special 301 provision of the Omnibus Trade and Competitiveness Act of 1988, due to China's violation of U.S. intellectual property rights; and the Administration is conducting negotiations on other market access problems in China. The President rejected certain export licenses and is considering additional sanctions provided for in the 1990 Missile Technology Control Act, in response to concerns over the sale of Chinese missiles. The Tariff Act of 1930 authorizes the President to prohibit the importation of goods made by prison labor. Some Members expressed the view that these laws, and continued pressure on China to improve its human rights behavior, would be better tools to bring about an improvement in China's behavior. They noted, in addition, that the Committee also was considering legislation to impose new conditions on the renewal of China's MFN status in 1992, which would require China to release and account for prisoners and otherwise improve its human rights record. For these reasons, these Members felt that an immediate cut-off of China's MFN status was too drastic a measure and would not lead to the hoped-for improvement in China's behavior.

Other Members, however, felt that China was well aware of strong U.S. concerns over its actions in such areas as human rights, proliferation, and trade. They argued that China has had two years to improve its record and not only has not done so but, in fact, seems to have pursued policies with total disregard for American concerns. They further argued that China does not meet the freedom of emigration requirements set forth in Title IV. They felt that because of the importance of MFN status to China, rescinding that status would provide a greater impetus for change within China than the economic and political sanctions imposed to date or those additional trade and export sanctions now being contemplated.

In light of the conflicting views among Members on the best course of action toward China, there was no clear majority on the Committee to report House Joint Resolution 263 favorably. However, because the Committee recognizes that there is a strong desire on the part of many Members of the House of Representatives to vote on the measure, the Committee is reporting the measure without recommendation.

MATTERS REQUIRED TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

Vote of the committee

In compliance with clause 2(1)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the resolution: House Joint Resolution 263 was ordered reported by the Committee, by voice vote, without recommendation.

Oversight findings

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives relating to oversight findings, the Committee, based on a public hearing held by the Subcommittee on Trade, has concluded a comprehensive review of United States-China trade relations, including the question of extension of China's nondiscriminatory MFN status. Because of the highly controversial nature of House Joint Resolution 263, the Committee has concluded that the resolution should be reported without recommendation.

With respect to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in the resolution.

Budgetary authority and cost estimates, including estimates of the Congressional Budget Office

In compliance with clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that there are no tax expenditures or new budgetary authority providing financial assistance to State and local governments in the resolution.

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee agrees with the cost estimates furnished by the Congressional Budget Office on House Joint Resolution 263 and required to be included herein:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 2, 1991.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.J. Res. 263, a joint resolution disapproving the recommendation of the President to extend Most-Favored-Nation (MFN) status to the People's Republic of China, as ordered reported on June 26, 1991, by the House Committee on Ways and Means.

Under the Trade Act of 1974, MFN status may not be conferred on a country with a nonmarket economy if that country maintains restrictive emigration policies. Because of this stipulation, the People's Republic does not currently qualify for MFN status. Under present law, however, the President may waive this prohibition on an annual basis if he certifies that granting MFN status would promote freedom of emigration in that country. The People's Republic

has been granted MFN status on an annual basis beginning in 1980. On May 29, 1991, President Bush notified the Congress of his recommendation to waive this prohibition and extend MFN treatment to the products of the People's Republic of China for an additional year, beginning July 4, 1991. H.J. Res. 263 would disapprove the President's recommendation to extend MFN treatment.

If the People's Republic were denied MFN status, tariff rates on its exports to the U.S. would rise substantially. The higher tariffs on these goods would increase the prices faced by U.S. consumers for the goods imported from the People's Republic, reducing demand. Therefore, imports of goods from the People's Republic would be lower than they would be if MFN status were to be extended. CBO estimates that the increase in tariff rates from loss of MFN status would result in an overall increase in customs duty revenues measured relative to revenues generated in the presence of continued MFN status because the increase in revenues resulting from the higher tariffs would outweigh the reduction in revenues resulting from the reduced level of imports from the People's Republic. In addition, it is likely that some of the decline in U.S. imports from the People's Republic will be made up by an increase in imports from other countries. In the absence of specific data on the likely size of this substitution effect, CBO assumes that an amount equal to one-half of the decline in U.S. imports from the People's Republic will be imported, at MFN rates, from other countries.

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. Pursuant to Section 252, CBO estimates that H.J. Res. 263 would result in a net increase in federal government revenues of \$435 million in fiscal year 1992 (see table below). In addition, CBO estimates that H.J. Res. 263 would have no effect on aggregate state and local government revenues or outlays.

PAY-AS-YOU-GO CONSIDERATIONS

(By fiscal year, in millions of dollars)

	1991	1992	1993	1994	1995
Changes in revenues.....	0	435	0	0	0
Changes in outlays.....	0	0	0	0	0

If you wish further details, please feel free to contact me or your staff may wish to contact John Stell at 226-2720 or Trevor Alleyne at 226-2758.

Sincerely,

ROBERT D. REISCHAUER,
Director.

Inflationary impact

With respect to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee states that House Joint Resolution 263 would not have an inflationary impact on prices and costs in the operation of the general economy.

ADDITIONAL VIEWS TO HOUSE JOINT RESOLUTION 263 OF
THE HONORABLE DICK SCHULZE, COMMITTEE ON WAYS
AND MEANS

According to section 402 of title IV of the Trade Act of 1974, the true factor in determining whether a Communist country should receive MFN treatment is whether it maintains an emigration policy that is free and open, or is moving in the free and open direction. China's emigration policy has never been free and open, and has become even more restrictive since the Tiananmen Square massacre. On this basis alone, China's MFN status should be revoked!

To begin with, China's Constitution does not even address the issue of the right of its citizens to emigrate. Such a protection had been guaranteed under the 1954 Constitution, but was removed from the 1975, 1978 and 1982 Constitutions.

On June 19, 1989, two weeks after Tiananmen, all exit permits and passports issued by the Chinese Government up to that point were simply invalidated. Then, the passport/exit permit reapplication and reissuance procedures were made more stringent by the Chinese Government to help police screen and apprehend suspected pro-democracy movement supporters.

Next, there are the two reports—a new requirement since Tiananmen—which must be filled out by exit permit and passport applicants. These reports describe the Chinese citizen's "performance" during Tiananmen Square and are expected to be confessional in nature. As a confessional report has been found more likely to lead to imprisonment and torture rather than permission to leave China, this requirement amounts to yet another way for the Chinese police to apprehend pro-democracy supporters. Further, it clearly hampers free emigration and is not indicative of a country with a free emigration policy.

May 1990 and 1991 Library of Congress Far Eastern Law Division reports note the dramatic decrease of approval of visa applications in Beijing and Shanghai, two of China's most active ports of exit. According to these reports, the "Rate of rejection is the worst it has been in a long time." Between January and March of 1990, some 19,512 citizens of Beijing and Shanghai applied to leave the country. Only 15,085 people were granted approval to go abroad, which means almost 25 percent were denied permission.

Another notable impediment to free emigration is the so-called "cultivation fee" that must be paid to the Chinese Government by students wishing to go abroad for self-financed graduate studies. Bearing in mind the fact that this "fee" amounts to what the average Chinese college graduate earns over an eight year period of time, this obviously precludes free movement and open emigration.

Existence of the cultivation fee also undermines a primary objective of title IV of the Trade Act of 1974, which seeks to prevent the

President from entering into trade agreements with, or extending MFN treatment to the products of, nations which "impose more than a nominal tax, levy, fine, fee or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice."

In further assessing the current degree of openness of China's emigration and travel policy, it is also useful to note the following quotation of the May 1991 Library of Congress report's summary.

The present Constitution of the People's Republic of China does not accord Chinese citizens the right of emigration. Since the Tiananmen Square massacre of June 4, 1989, the central authorities have made it more difficult for people to leave the country. Were it not because the leadership is afraid of losing China's most-favored-nation status, it probably would have taken even more drastic measures to restrict its citizens' freedom of movement within China and overseas.

The measures imposed include new passport and exit permit criteria, restraints on PRC citizens who work in Hong Kong, restrictions on travel abroad for employees of targeted special institutions, more strictures as to who will be allowed to receive training abroad, complication of the application process for conducting research or study abroad, retaliatory action against prominent figures who have left the country without official approval, the establishment of a new public security body devoted entirely to more stringent control of Chinese society, curtailment of overseas trips by officials, and tightening up of the identification card system. In some cases, extra financial risks or burdens are involved. These additional controls very much seem to be aimed at discouraging people who disagree with the policies of the hardliners from leaving the country either for shorter stays abroad or for emigration.

Even the State Department, in its "Country Reports on Human Rights Practices for 1989" as it pertains to China, concedes that existing restrictions on foreign travel were tightened in 1989."

Regrettably, although it admits that China's policy has worsened since Tiananmen, the State Department contends that China's emigration policy is open because it fills the annual U.S. permanent immigrant visa quota of 17,000 people.

While the State Department has its own conveniently narrow interpretation of the law, section 402 of title IV of the Trade Act of 1974 does not specify or imply that the degree of openness of a country's emigration policy should be based solely on whether it fills the U.S. immigrant quota.

According to the section of the 1974 Ways and Means Committee report devoted to section 402, Congress sought "to assure that continued dedication of the United States to fundamental human rights." Understandably, Congress was and is no less concerned about the fate of those seeking to leave Communist nations on a temporary basis than of those struggling to become permanent immigrants elsewhere.

The fact remains that the People's Republic of China does not maintain an emigration policy that can reasonably be construed as meeting the freedom of emigration requirements set forth in the Trade Act of 1974. Further, the Presidential waiver of these requirements (for each of the last 10 years) with the objective of promoting a free and open policy in China has not proven successful.

For the reasons cited above, passage of House Joint Resolution 263, legislation disapproving the President's recommendation to Congress that China be extended MFN trade status for another year, is essential.

DICK SCHULZE.

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